IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 124 OF 1999

The State of Maharashtra ...Applicant
V/s.
Kashinath Ganesh Kulkarni & Ors. ...Respondents

Shri P.S. Hingorani, APP for the Applicant.
Shri S.V. Marwadi for Respondent No.1.
Shri H.H. Keshwani for Respondent No.4.

WITH

CRIMINAL APPLICATION NO. 1749 OF 1999
IN
CRIMINAL REVISION APPLICATION NO. 124 OF 1999

Mr.Sanjay Dattatray Amrute ...Applicant
V/s.
State of Maharashtra ...Respondent

Shri A.B. Vagyani for Respondent No.1.
Shri P.S. Hingorani, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 9, 2007

P.C. :-

1. Both these criminal applications can be disposed of by a common order since the impugned order in both these criminal revision applications is common. Brief facts which are relevant for deciding the criminal applications are as under :-

2. on 1.4.86, 175 bundles of wooden logs belonging Jawahar Saw Mills were seized. A facility of filing the form called as "N" form was given to the said Jawahar Saw Mills. After these bundles were seized, this facility of filling "N" form was revoked on 3.4.86. On 22.8.86, an application was made by Jawahar Saw Mills in which they offered their explanation and had brought to the notice of the concerned authorities lorry receipts and other material in support of their explanation. The explanation offered by Jawhar Saw Mills was accepted and "N" form facility was restored on 30.11.86.

3. However, on 10.12.87, the Vigilance department reopened the file concerning the non-payment of Rs.75,354.45ps. excise duty to the concerned authorities. M/s.Jawahar Saw Mills paid the said amount of Rs.75,354.45ps. under protest on 10.2.87. Thereafter, on 22.11.88, FIR was lodged against the owner of Jawahar Saw Mills and other public servants under the provisions of Prevention of Corruption Act for having entered into a conspiracy with the owner of the Saw Mills to defraud the BMC of octroi duty to the tune

of Rs.75,354.45ps. Sometime in July, 1998, the prosecution expressed their desire to examine three witnesses in this case and the trial started on 22.3.99 and the first witness was examined on that day. Thereafter on 26.3.99, a second witness was examined and the learned Special Judge was pleased to fix the case for final disposal on 13th, 14th and 15th April, 1999. In the meantime, the Investigating Officer from the Anti Corruption Bureau, Shri Sanjay Dattatray Amrute was transferred from the Anti Corruption Bureau though he continued to be Investigating Officer in this case. It appears from the record that the third witness could not be summoned on the dates which were fixed for final disposal of the cases. The learned Special Judge started recording the statement under Section 313 of the Cr.P.C. of the first accused. Before proceeding to record the statement under Section 313, the court closed the case and refused permission to the prosecution to summon the third witness. The Court while passing the impugned order observed that the Investigating Officer was not diligent and he had not issued a single witness summons to the remaining witness for remaining present

in the court on three dates which were assigned for final disposal of the said case. The learned Special Judge further proceeded to reject the application of the prosecution to permit the prosecution to examine further witnesses. While rejecting the said application, the Special Court directed that the copy of the order should be forwarded to the Director General of Police, Shri Inamdar, who may take appropriate action against the Investigating Officer, if he deems fit and proper. Being aggrieved of this order, the State has filed Criminal Revision Application No.124/99 and Investigating Officer against whom the remarks were made in the said order, has filed Criminal Application No.1749/99 for expunging the said remarks.

4. I have heard the learned APP appearing on behalf of the State and Shri Keshwani, learned Counsel appearing on behalf of the accused no.4, owner of Jawahar Saw Mills. I have perused the impugned order. In my view, the learned Special Judge was justified in rejecting the application for issuance of fresh summons to the remaining witness since two witnesses have

already been examined and the case was specifically fixed for final disposal on that day and further on the earlier date, the court had already started recording the statement of the accused under Section 313 of the Cr.P.C. Considering the peculiar facts and circumstances of the case, the court felt that further permission to examine the remaining witness was not necessary. Therefore, in my view, there is no reason to interfere with the impugned order.

5. However, in my view, the Special Court erred in assigning the responsibility of non-attendance of the witness on the Investigating Officer. It is an admitted position that he had already been transferred from the ACB. Two witnesses were already examined. On the earlier occasion also, the witnesses were kept present without issuance of the witness summons. Thereafter, the matter was kept on the next date for other witnesses who were to be examined and without issuance of the witness summons, those witnesses were examined on the date on which the matter was fixed. It is pertinent to note that the recording of evidence started on 22.3.99.

On that day, the evidence of PW 1 was examined. Matter was adjourned to 26.3.99. On that day, PW 2 was examined and thereafter, the matter was adjourned to 13.4.99. The record indicates that on each date, the witnesses were examined and that there was undue delay in completing the procedure of recording of witnesses. No time earlier had been taken by the Investigating Officer on the ground of absence of witnesses. Under these circumstances, in my view, it was not proper on the part of the learned Special Judge to have come to the conclusion that the Investigating Officer was not diligent and that therefore, merely because the witness summons was not issued, there was lapse on his part. Further, it was not necessary to direct the Director General of Police to take appropriate action against the Investigating Officer. The learned Judge was right in rejecting the application of the prosecution for examining the remaining witness particularly, because the case pertained to non-payment of octroi of Rs.75,354.45 ps. which incident had taken place on 1.4.86. Thereafter, the explanation of the owner of Saw Mills was accepted. The facility of "N" form which was

revoked on 3.4.86 was again regranted on 30.11.86. After the case was reopened, the owner of the Saw Mills had in fact paid the amount of Rs.75,354.45ps. on 10.2.87. The FIR was lodged after a lapse of one and half year i.e. on 22.11.88. Considering these peculiar facts and circumstances of the case, the learned Special Judge was justified in rejecting the application of the prosecution more particularly, because on the earlier date, the Special Judge had started recording statement of accused no.1 under Section 313. Under these circumstances, there is no reason to interfere with the order rejecting the application of the prosecution to examine further witnesses.

6. The Special is directed to complete the recording of statement of accused under Section 313 and decide the case in accordance with law.

7. As regards the Criminal Revision Application filed by the Investigating Officer, Sanjay Dattatray Amrute vide Criminal Revision Application No.1749/99,

the observation and strictures made against the Investigating Officer are expunged. Criminal Revision Application is allowed in terms of prayer clause (a) with further observation that the direction to hold an enquiry against the applicant-Shri Amrute which was given to the Director General of Police is also set aside.

8. With the result, Criminal Revision Application No.124/99 is rejected.

9. The Special Judge is directed to record the statements of the remaining accused under Section 313 of the Cr.P.C. and decide the case in accordance with law.

10. Criminal Revision Application No.1749/99 is allowed as stated hereinabove.

. Both these applications are disposed of.

. Parties to act on the authenticated copy of this order.

(V.M. Kanade, J.)